LAW & OUR RIGHTS

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JUSTICE IN CRISIS

ROHINGYA REFUGEE crisis and global failure of justice

Justice in Crisis
In response to the Gambia's allegation against Myanmar, the International Court of Justice (ICJ) ordered temporary measures in 2020 to stop the genocide and protect evidence. However, the orders remain largely symbolic as military operations are still ongoing in Rakhine State, humanitarian access is limited, and there is no real accountability in sight.

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Years after the mass exodus of Rohingya people from Myanmar, the crisis stands as one of the clearest examples of the global failure of justice. Although Myanmar is bound by the Geneva Conventions, customary international humanitarian law norms, and the Genocide Convention of 1948, the Rohingya people are still deprived of justice, safety, and a viable path to return home. The problem, therefore, lies not in the absence of legal rules, but in the absence of principled enforcement.

International courts have played a role, although lacking effects. In response to the Gambia's allegation against Myanmar, the International Court of Justice (ICJ) ordered temporary measures in 2020 to stop the genocide and protect evidence. However, the orders remain largely symbolic as military operations are still ongoing in Rakhine State, humanitarian access is limited, and there is no real accountability in sight. Although the ICJ has moral and legal authority, it has limited enforcement mechanism. Consequently, its decisions could end up being nothing more than formal condemnations.

The International Criminal Court (ICC) suffers from similar limitations. However, in 2018, it was decided that the ICC can deal with crimes that cross borders to a signatory State, like that of the forced deportation of Rohingya people to Bangladesh (although Myanmar is not a signatory to the Rome Statute). While this has allowed an investigation to proceed, it does not address the full scale of atrocities committed within Myanmar. Eventually, arrests remain impossible without cooperation from the very same authorities accused of the crimes. As a result, justice delayed, in this context, increasingly resembles justice denied.

Furthermore, geopolitics has further weakened enforcement. China and Russia have repeatedly protected Myanmar from strong actions by the UN Security Council using their veto powers. On the other hand, ASEAN's long-standing policy of non-interference has led to careful diplomacy instead of holding the states accountable. As a result, most of ASEAN's work is still symbolic, with little or no effect to stop the mass atrocities. This paralysis exposes a harsh reality: international humanitarian law depends both on legal obligation and on political will.

The consequences of this failure are borne most heavily (and disproportionately) by Bangladesh. The conditions for more than a million Rohingya refugees in Cox's Bazar and Bhasan Char are increasingly deteriorating. The scarcity of funds has resulted in reduced food rations, limited educational opportunities, and overburdened health services. Moreover, donor fatigue has made an already fragile humanitarian situation even more vulnerable. On the other hand, the lack of accountability in Myanmar makes safe, voluntary, and dignified return rather impossible.

If the world really cares about justice, it needs to stop responding in bits and pieces and start working together. Bangladesh, willing ASEAN members, and relevant UN bodies could all support a regional system for collecting and documenting evidence. This could help keep the evidence safe and protect the witnesses, even if Myanmar remains unwilling to cooperate. Justice should not rely on the acquiescence of alleged offenders.

At the same time, sanctions need to be clear and impactful as well. While individual national measures have little effect, a unified sanctions regime aimed at military leaders, military-owned businesses, and arms transfers would put real pressure on them. Trade privileges and development cooperation ought to be explicitly contingent upon demonstrable adherence to international court directives. Similarly, ASEAN must also reflect on its actions. The principle of non-intervention should not equate to lack of responsibility. Establishing a regional framework that aligns humanitarian access with accountability will eventually strengthen ASEAN's credibility.

Indeed, as of 2026, the Rohingya crisis shows a dangerous schism between law and reality. International humanitarian law is well developed, but it fails when political interests trump accountability. Closing this gap is not only a legal imperative but also a moral one. For the Rohingya people, justice delayed is a lived experience in overcrowded camps, through uncertain futures and broken promises. The world must now decide whether international law will remain a statement of principles or finally become a tool that delivers justice.

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RIGHTS VISION

Recognising a judicially enforceable right to environment

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The issue of climate justice in Bangladesh has long been relegated to the footnotes of constitutional discourse. In the original version of our Constitution, environmentalism was regarded neither as a constitutional right nor as a state policy. When the Fifteenth Amendment of the Constitution introduced Article 18A in 2011, it was the first express mention made within the Constitution itself of environmental protection. However, the clause was incorporated in the non-binding part of the Constitution, namely 'Fundamental Principles of State Policy'. As such, the so-called "right" to the environment was no more than an empty promise, due to the provision of Article 8(2) that renders fundamental principles judicially unenforceable. Indeed, Article 18A simply requires the state to "protect and improve the environment", but it does not grant citizens an enforceable right. As such, the courts have had to continuously rely on a dynamic interpretation of Article 32 of the right to life. In the cases Grameenphone Ltd v BTRC and Nazrul and Brothers Ltd v Government of Bangladesh (2020), arguments referencing Article 18A were made only tangentially to underscore the inherent shortcomings of the prevailing system of laws. This conundrum leads to two main concerns: first, environmental rights depend on broad judicial interpretations of the right to life, which can potentially dilute the right to life; second, environmental governance is based on the discretion of the executive rather than citizen-activated mechanisms of enforcement.

Bangladesh can no longer ignore the enforceability of environmental rights. The UN Human Rights Council Resolution 48/13 (2021) and the UN General Assembly Resolution 76/300 (2022) affirm the right to a clean, healthy, and sustainable environment. The recent 2025 Advisory Opinion of the International Court of Justice in respect of Climate Change reiterated that certain rules of international law relating to climate system, may give rise to erga omnes obligations binding upon all states regardless of their treaty memberships. Moreover, the Court recognised that climate-related obligations do not only derive from treaties, such as the Kyoto Protocol, and Paris Agreement, but also from customary international law norms. Notably, Bangladesh's very submissions before the ICJ itself expressly acknowledged that this right is "now well accepted under international law". Accordingly, in my opinion, to deny judicial enforceability at the national level is to do what Bangladesh itself has denounced at the international level.

The end of authoritarian government in 2024 has created what was dubbed by some scholars a "constitutional moment", when fundamental constitutional changes are possible. Other post-authoritarian contexts elsewhere demonstrate how progressive environmental rights are incorporated within the constitutions. South Africa incorporated within its 1996 Constitution an enforceable right to an environment not harmful to health or well-being, and Kenya incorporated within its 2010 Constitution a right specifically to a clean and healthy environment. Kenyan jurisprudence, especially per the judgment Peter K. Waweru v Republic (2006), shows that these rights can be made justiciable by balancing environmental integrity and public interest. Both countries reveal that ESC rights, once relegated to a secondary status as non-justiciable, can be both

incorporated and enforced without depriving democratic governance.

In this light, it needs to be mentioned that the Constitution Reform Commission of Bangladesh has emulated this comparative trend by calling for entrenching progressive environmental rights within the Constitution. Failing to take advantage of this would entail forfeiting a crucial moment of rights-based rejuvenation.

Critics regularly contend that judicial protection of ESC rights poses the peril of judicial overreach on issues of policy and allocation of resources. However, comparative constitutional practice inform that courts can practice restraint and, at the same time, ensure accountability. The popular case Minister of Health v Treatment Action Campaign (2002) of the South African Constitutional Court is a key example in this regard. Analogously, progressive realisation of duties empowers courts to reconcile rights protection with available resources. Far from upsetting separation of powers, judicially enforceable ESC rights can strengthen democratic accountability and hold the state to account for its inaction.

Budgetary constraints are yet another usual counterargument. However, budgetary issue may arise in cases relating to civil and political rights as well. In conclusion, in order to meet international standards of law and comparative practice, Bangladesh must move beyond its prevailing reliance on expansive reading of the right to life. While the courts have commendably expanded the ambit of Article 32 to encompass environmental concerns, this method is unhelpful both for the sake of rights and state's duties. Granting a justiciable right to a safe, clean, healthy, sustainable, and balanced environment would increase clarity in governance, consistency in application and enforcement of rules.

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LAW LETTER

Digital surveillance and the right to privacy

The unprecedented growth of digital innovations within the twenty-first century has significantly shaped the way governance, communication, and daily living are conducted. This is because innovations like Artificial Intelligence (AI), biometric technology, as well as data analytics tools, while promoting security and efficiency, also reinforce concerns with respect to digital surveillance and right to privacy. The challenge of balancing between security and freedom has emerged as one of the key issues in debates on human rights within this context.

Notably, the scope of privacy has been broadened in the digital age to encompass the concerns of intrusion on physical privacy, informational privacy, and privacy relating to decision-making. It can be argued that the proliferation of the use of smartphones and other devices, such as wearable technology and smart systems, has made the users more susceptible to privacy concerns. The worst part of all these is that much of this happens in a passive and largely unsuspected manner.

Modern surveillance tools have become widespread and advanced. This is because biometric identification tools, facial recognition software, location monitoring, and mass data

retention have made it possible for individuals to be continuously tracked and monitored. Certain state activities, such as creating massive biometric databases and monitoring systems, have been proposed and advertised to ensure national and internal security. Unfortunately, these activities have several implications for the existing privacy norms and standards.

Alongside the state-controlled surveillance, there is this phenomenon of "surveillance capitalism," whereby the data of private citizens is collected, analysed, and exploited for securitization, purposes of targeted advertising and the prediction of behaviour by for-profit companies. By such targeted advertisements and content moderation practices, the behavioural and even political opinions as well as actions can be influenced. The terms of privacy policies are also too complex and, to a certain extent, do not offer any alternatives to consent and are thus largely a mere formality.

Thus, a legal vacuum persists in all these respects. A majority of nations do not have a full code of practice in relation to data protection. Even where a code exists, in certain nations, the exemption provisions in regard to the nation's security are typically opaque and unnecessarily broad. Additionally, the international movement of data makes the regulations difficult to implement.

There needs to be a strong human rights-oriented regulatory framework in place. The regulation of surveillance should meet the principles of legality, in that laws should be clear, accessible, and narrowly tailored, have a legitimate aim, and be put in place as a last resort.

The deeper significance of digital surveillance also lies within its ethical ramifications. When all citizens are under perpetual observation, a "chilling effect" on other fundamental rights is triggered that holds back active participation by citizens within a democratic setup. The worst victims of this are minorities, activists, and people with non-dominant opinions in societies.

To meet these demands, there needs to be a strong human rights-oriented regulatory framework in place. The regulation of surveillance should meet the principles of legality, in that laws should be clear, accessible, and narrowly tailored, have a legitimate aim, and be put in place as a last resort. Moreover, such actions should be proportionate, meaning that effects on human rights should be limited and should not last for too long. Strong mechanisms of accountability, such as independent oversight bodies, access to justice, and requirements of transparency and effective remedy, will also help ensure that the right to privacy is not undermined by invasive measures such as surveillance.

All in all, although national and cyber security are genuine matters of concern for states, the concern of individual liberty and privacy cannot be ignored. A careful balance needs to be struck to address both the concerns.

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